IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2725 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DIPAK KANTILAL DAVE

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2725 of 2000

MR RD DAVE for Petitioner No. 1

Ms. Shraddhaben Trivedi, AGP for Respondent No. 1

MR PV HATHI for Respondent No. 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 29/11/2001

ORAL JUDGEMENT

Heard learned advocate Mr. Rajesh D. Dave for the petitioner; learned AGP Ms. Shraddhaben Trivedi for

respondent No. 1 and Mr. Hathi, learned advocate for respondent No.2. This petition was admitted by this Court on 6.7.2000 by issuing rule thereon. In this petition, respondent No.2 has filed affidavit in reply on 30.6.2000 and respondent No.1 has filed affidavit in reply on 6.10.2000. Brief facts of the present petition are to the effect that the petitioner herein is challenging the order of rejection of the application of the petitioner for appointment on compassionate ground by the State Government dated 7th October, 1998. Said application of the petitioner was rejected only on the ground that the income of the family of the petitioner is exceeding the income criteria as per the Government Circular and, therefore, on that ground, his application for appointment on compassionate ground has been rejected by the State Government.

In this rejection order dated 7th October, 1998 passed by the State Government, it has been mentioned that while considering the application of the petitioner for compassionate employment, income of the family has been taken into account wherein the amount of pension Rs.200.00 has been taken into consideration wherein the amount of D.A. is Rs.240/-; amount of medical allowance is Rs.30.00; and Rs.250.00 yearly income and thus Rs.720.00 per month has been taken into account. In the affidavit in reply, averments have been made to the effect that in this way, monthly income of the family was worked out at Rs.720.00 per month which is more than the specified limit of income and, therefore, his application was not accepted. The State Government has also gone to clarify that at the relevant time, the petitioner was having income of Rs.720.00 per month which is more than Rs.600.00 and, therefore, proposal has been rejected and therefore, same does not require any reconsideration. It is also clarified that at present, the income criteria is enhanced to Rs.2,500.00 but the same is not applicable in case of the petitioner as the same circular enhancing the limit is not having the retrospective effect.

In view of this affidavit in reply filed by the State Government, it is clear that while taking into account the income of the family, the State Government has considered the amount of pension and D.A. which has been received by the widow of the deceased employee. Such a view on the part of the Government is apparently not proper in view of the decision of this Court in special civil application no. 799 of 2001 dated 15th June, 2001. In the said decision, this court has held that while considering the income of the family for the purpose of considering an application for appointment on

compassionate ground, amount of pension received by the widow of the deceased employee has to be excluded. In the instant case, the State Government has not excluded the amount of pension of Rs.720.00 and, therefore, income of the family has exceeded the ceiling limit. If such amount is not considered or is excluded while considering the income of the family of the petitioner's family, then, there is no income of the family of the petitioner. In view of these facts, the matter is required to be sent to the respondent No.1 for reconsideration while keeping in view the observations and principles laid down by this Court in special civil application no. 799 of 2001 dated 15.6.2001.

In view of these facts, without entering into the merits of the matter, at this stage, it is directed to the petitioner to make detailed representation to respondent No.1 in the subject matter of this petition in light of the observations made by this court in special civil application no. 799 of 2001 dated 15th June, 2001. Such representation will be made by the petitioner within fifteen days from the date of receipt of copy of this order. As and when such representation made by the petitioner is received by the respondent No.1, it is directed to the respondent No.1 to consider and decide it in accordance with law while keeping in view the observations made by this Court in special civil application no. 799 of 2001 dated 15th June, 2001 and to pass appropriate order on such representation in accordance with law within one months from the date of receipt of such order and to communicate the same to the petitioner. Petitioner is directed to annex copy of decision dated 15.6.2001 in special civil application no. 799 of 2001 to the representation that may be made to respondent No.1 and it is directed to respondent No.1 consider and decide the representation of the petitioner in light of the observations made by this Court in the said petition on 15.6.2001. With these observations and directions, this petition is disposed of at this stage without observing anything on merits and with a liberty in favour of the petitioner to challenge the order that may be passed by the respondent no.1 before the appropriate forum in accordance with law, if such orders are adverse to the petitioner. Rule is discharged accordingly with no order as to costs. Direct Service is Permitted.

29.11.2001. (H.K. Rathod,J.)

Vyas